

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Food Lion, LLC, and Maryland and Virginia  
Milk Producers Cooperative Association,  
Inc.

*Plaintiffs,*

v.

Dairy Farmers of America, Inc.,

*Defendant.*

Case No. 1:20-cv-00442

**PLAINTIFFS' FIRST MOTION TO COMPEL  
AND REQUEST FOR EXPEDITED CONSIDERATION**

Pursuant to Federal Rule of Civil Procedure 37, and Local Rule 37.1, Plaintiffs Food Lion, LLC (“Food Lion”) and the Maryland and Virginia Milk Producers Cooperative Association, Inc. (“MDVA”), by and through undersigned counsel, move to compel Defendant Dairy Farmers of America, Inc. (“DFA”) to produce certain documents responsive to Requests Nos. 1 and 3 of Plaintiffs’ First Requests for Production. DFA argues that it need not produce these relevant and responsive documents because (1) the documents are supposedly exempt from discovery under Federal Rule of Evidence 408, and (2) it is free to “decline” to produce materials (already produced to the Department of Justice in its antitrust review) when it believes Plaintiffs are attempting to “relitigate” a prior case. Because neither argument identifies a cognizable basis to withhold responsive documents, Plaintiffs respectfully request that

the Court enter an order compelling DFA to immediately produce any documents it has withheld on these bases. A short memorandum in support is attached.

The parties have agreed to conduct discovery in this litigation on an expedited basis, including completing document production by October 2, 2020, and fact depositions by October 31, 2020. The parties are currently negotiating a procedure for expedited briefing of discovery issues in light of this expedited schedule, and will inform the Court if they are unable to come to an agreement. Plaintiffs respectfully ask that the Court, once briefing is completed, consider this Motion to Compel on an expedited basis.

DATED: August 24, 2020

Respectfully submitted,

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### **CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 37.1(a), I certify that after personal consultation and diligent attempts to resolve differences, the parties are unable to reach an accord. Carter Simpson and Jack Martin, for Food Lion, and Amber McDonald, counsel for DFA, exchanged letters and spoke by telephone to discuss the matters above. Carter Simpson sent a letter to Amber McDonald on July 31, 2020, confirming DFA's positions as stated above. Amber McDonald sent a response letter on August 10, 2020, confirming that DFA is committed to its Rule 408 position. The parties discussed these positions by telephone on August 10, 2020. The parties again discussed the *Southeastern Milk* materials produced to the Department of Justice by telephone on August 11, 2020, at which time the parties confirmed they had reached impasse. Food Lion memorialized this conversation in a letter sent August 18, 2020.

/s/ Carter S. Simpson

Carter S. Simpson  
Hunton Andrews Kurth LLP